STATE OF CALIFORNIA

ENDORSED FILED

OFFICE OF ADMINISTRATIVE LAW

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In re:	
Request for Regulatory Determination filed by JAMES J. MILAM concerning the policy decision of the CALIFORNIA BOARD OF PODIATRIC MEDICINE that it is misleading to consumers if a podiatrist advertises a specialty certification unless the certification was issued by a board or organization approved by the Council on Podiatric Medical Education	**1999 OAL Determination No. 10** **[Docket No. 97-015]** **March 30, 1999** **Determination Pursuant to Government Code Section 11340.5; Title 1, California Code of Regulations, Chapter 1, Article 3**

SECRETARY OF STATE

Determination by: **CHARLENE G. MATHIAS, Deputy Director**

HERBERT F. BOLZ, Supervising Attorney
DEBRA M. CORNEZ, Staff Counsel
TAMARA PIERSON, Administrative Law Judge
on Special Assignment
Regulatory Determinations Program

SYNOPSIS

The issue presented to the Office of Administrative Law ("OAL") is whether the policy decision by the Board of Podiatric Medicine limiting the advertising of specialty certifications by podiatrists constituted a "regulation," which was therefore without legal effect unless adopted in compliance with the Administrative Procedure Act ("APA").

OAL has concluded that at the time the request for determination[1] was filed in October 1996, the challenged policy decision was a "regulation" that was issued in violation of the APA. However, in January 1997, the Board of Podiatric Medicine

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("Board") rescinded its policy decision. In 1998, the Legislature amended Business and Professions Code section 651 (effective January 1, 1999) to codify the Board's policy decision.[2]

ISSUE

OAL has been requested to determine[3] whether the policy decision, adopted by the Board of Podiatric Medicine on June 1, 1990, and revised on June 14, 1991, that it is misleading to consumers if a podiatrist's advertisement includes a specialty certification unless the specialty certification was issued by a board or other organization approved by the Council on Podiatric Medical Education, was a "regulation" which must be adopted pursuant to the APA.[4]

ANALYSIS

The Board's policy decision states in full:

> "There has been a proliferation of podiatric specialty boards, associations, institutes, and other certifying organizations which purport to certify or specially recognize podiatrists as having specialty training or some other professional superiority. There is a great likelihood that *unless standards exist for the issuance of specialty certifications and other recognitions of professional superiority*, and that unless such organizations are reviewed by a separate authority, *consumers will be mislead* by podiatrists who advertise specialty certification or other recognition by organizations that lack such standards and accountability.
>
> "Inasmuch as the Council on Podiatric Medical Education (CPME) provides a mechanism for the approval of podiatric specialty boards, this board finds that it is *inherently misleading* for a podiatrist to advertise a specialty certification or other recognition of professional superiority unless that specialty certification or recognition is issued or awarded by a specialty board or other organization which is authorized or approved by the CPME. [Underline original; italic emphasis added.]"

OAL assumes that the Board's use of "inherently misleading" in its policy decision means that the Board would find such an advertisement to be misleading to

consumers and therefore prohibited under Business and Professions Code section 651.

In its response, the Board argues that the issue of whether the policy decision was a "regulation" is moot because the Board formally acted to rescind the policy decision on January 28, 1997, and furthermore, Business and Professions Code section 651 was amended, effective January 1, 1999,[5] to codify the Board's policy that a podiatrist may advertise a specialty certification only if that specialty certification was received from a board or association that had been approved by the Council on Podiatric Medical Education.[6]

OAL does not agree with the Board's argument. The Board's rescission of the challenged policy after the request for determination was filed and the later codification of that policy does not render the issue moot. OAL is required to consider all written information or evidence submitted in compliance with title 1, California Code of Regulations ("CCR"), sections 122, 124 and 125 in regards to a request for determination and issue a written determination, along with the reasons supporting the determination, as to whether the challenged state agency rule was a "regulation" at the time the request for determination was filed.[7]

The following is OAL's analysis regarding the Board's policy decision that it is misleading to consumers if a podiatrist advertises a specialty certification unless that specialty certification was issued by a board or association that has been approved by the Council on Podiatric Medical Education.

I. IS THE APA GENERALLY APPLICABLE TO THE QUASI-LEGISLATIVE ENACTMENTS OF THE BOARD OF PODIATRIC MEDICINE?

Government Code section 11000 states:

> "As used in this title [Title 2. "Government of the State of California" (which title encompasses the APA)], 'state agency' includes every state office, officer, department, division bureau, board, and commission."

The APA narrows the definition of "state agency" from that in Section 11000 by specifically excluding "an agency in the judicial or legislative department of the state government."[8] The Board of Podiatric Medicine is within the Division of

Licensing of the Medical Board of California, which is in neither the judicial or legislative branch of state government. There is no specific statutory exemption which would permit the Board to conduct rulemaking without complying with the APA, at this time.

In fact, Section 2470 of the Business and Professions Code states:

> "The board may adopt, amend, or repeal, *in accordance with the provisions of the Administrative Procedure Act*, regulations which are necessary to enable the board to carry into effect the provisions of law relating to the practice of podiatric medicine. . . . [Emphasis added.]"

OAL, therefore, concludes that APA rulemaking requirements generally apply to the Board.[9]

II. DOES THE CHALLENGED POLICY DECISION CONSTITUTE A "REGULATION" WITHIN THE MEANING OF GOVERNMENT CODE SECTION 11342?

Government Code section 11342, subdivision (g), defines "regulation" as:

> ". . . *every* rule, regulation, order, or standard of general application *or* the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by *any* state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure . . . . [Emphasis added.]"

Government Code section 11340.5, authorizing OAL to determine whether agency rules are "regulations," and thus subject to APA adoption requirements, provides in part:

> "(a) *No* state agency shall issue, utilize, enforce, or attempt to enforce *any* guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, which is a [']regulation['] as defined in subdivision (g) of Section 11342, *unless* the guideline, criterion, bulletin, manual, instruction, order, standard of general application or other rule has been adopted as a regulation and filed with the Secretary of State pursuant to [the APA]. [Emphasis added.]"

In *Grier v. Kizer*,[10] the California Court of Appeal upheld OAL's two-part test[11] as to whether a challenged agency rule is a "regulation" as defined in the key provision of Government Code section 11342, subdivision (g):

First, is the challenged rule either:

- a rule or standard of general application, *or*
- a modification or supplement to such a rule?

Second, has the challenged rule been adopted by the agency to either:

- implement, interpret, or make specific the law enforced or administered by the agency, *or*
- govern the agency's procedure?

If an uncodified rule satisfies both parts of the two-part test, OAL must conclude that it is a "regulation" subject to the APA. In applying the two-part test, OAL is mindful of the admonition of the *Grier* court:

> ". . . because the Legislature adopted the APA to give interested persons the opportunity to provide input on proposed regulatory action (*Armistead*, . . . 22 Cal.3d at p. 204, 149 Cal.Rptr. 1, 583 P.2d 744), we are of the view that *any doubt as to the applicability of the APA's requirements should be resolved in favor of the APA*.[12] [Emphasis added.]"

A. IS THE CHALLENGED POLICY DECISION A "STANDARD OF GENERAL APPLICATION"?

The Board argues that the policy decision was not a standard of general application because:

> "It was instead a mere *policy statement*, i.e., *an advisory statement, to the professional community and to the general public regarding advertising practices*. The Policy Decision *did not constitute an enforceable standard* and had never been *intended* as such. No administrative disciplinary action was, or could have been, founded on a 'violation' of the Policy Decision.

> The Board has instead been prepared and content to enforce, on a case-by-case basis, the statutory prohibitions against misleading advertising."

The fact that the Board characterizes the policy decision as a "policy statement" or "advisory statement" is of no legal consequence. Whether an agency action "constitutes a regulation does not depend on the designation of the action, but rather on its effect and impact on the public."[13] *State Water Resources Control Board v. Office of Administrative Law (Bay Planning Commission)* ("*SWRCB v. OAL*") (1993)[14] made clear that reviewing authorities focus on the *content* of the challenged agency rule, not the *label* placed on the rule by the agency.

> "[T]he. . . Government Code [is] careful to provide OAL authority over regulatory measures whether or not they are designated 'regulations' by the relevant agency. In other words, *if it looks like a regulation, reads like a regulation, and acts like a regulation, it will be treated as a regulation whether or not the agency in question so labeled it* . . . . [Emphasis added.]"

By its own statement, the Board acknowledges that the policy decision is a policy statement "to the professional community and to the general public regarding advertising practices."[15] In light of Business and Professions Code section 651, subdivisions (f) and (g), which make it a misdemeanor and a possible revocation or suspension of a podiatrist's license for *misleading* the public, the Board's policy decision clearly would have an effect and impact on podiatrists and the general public.

The Board's argument that "violation" of the policy decision would not result in disciplinary action does not disqualify the policy decision from being a rule or standard of general application. Government Code section 11340.5 prohibits any state agency from "issuing" a rule or standard of general application unless that rule or standard has been adopted pursuant to the APA. It is not required that the state agency actually enforce the standard; just issuing the rule or standard is sufficient to violate the APA.

The Board's policy decision applied to the advertising of a specialty certification by all podiatrists licensed to practice in the state of California. For an agency policy to be a "standard of general application," it need not apply to all citizens of the state or to the general public. It is sufficient if the rule applies to members of a class, kind, or order.[16] The Board's policy decision applied to all members of the class of licensed podiatrists. It is, therefore, a standard of general application.

B. DOES THE CHALLENGED POLICY DECISION IMPLEMENT, INTERPRET OR MAKE SPECIFIC THE LAW ENFORCED OR ADMINISTERED BY THE AGENCY OR GOVERN THE AGENCY'S PROCEDURE?

At the time the request for determination was made, Business and Professions Code section 651 stated in part:

> "(a) It is *unlawful* for any person licensed under this division [division 2, titled "Healing Arts," commencing with section 500] or under any initiative act referred to in this division to disseminate or cause to be disseminated, any form of public communication containing a false, fraudulent, *misleading*, or deceptive statement or claim, for the purpose of or likely to induce, directly or indirectly, the rendering of professional services or furnishing of products in connection with the professional practice or business for which he is licensed. A 'public communication' as used in this section includes, but is not limited to, communication by means of television, radio, motion picture, newspaper, book, or list or directory of healing arts practitioners.
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> "(b) A false, fraudulent, *misleading*, or deceptive statement or claim includes a statement or claim which does any of the following:
>
> (1) Contains a misrepresentation of fact.
>
> (2) Is likely to mislead or deceive because of a failure to disclose material facts.
>
> (3) Is intended or is likely to create false or unjustified expectations of favorable results.
>
> (4) . . . .
>
> (5) Contains other representations or implications that in reasonable probability will cause an ordinarily prudent person to misunderstand or be deceived.
>
> ". . . .
>
> "(e) Any person so licensed may not use any professional card, professional announcement card, office sign, letterhead, telephone directory listing, medical list, medical directory listing, or a similar professional notice or

device if it includes a statement or claim that is false, fraudulent, *misleading*, or deceptive within the meaning of subdivision (b).

"(f) Any person so licensed who violates any provision of this section is *guilty of a misdemeanor*. . . .

"(g) Any violation of any provision of this section by a person so licensed *shall constitute good cause for revocation or suspension* of his or her license or other disciplinary action.

"(h) *Advertising* by any person so licensed *may include* the following:

. . . .

(5) *A statement that the practitioner is certified by a private or public board or agency or a statement that the practitioner limits his practice to specific fields*. . . . [Emphasis added.]"[17]

Title 16, CCR, section 1399.688 stated:

"A licensed doctor of podiatric medicine may advertise the provision of any professional services authorized to be provided by such license in a manner authorized by Section 651 of the [Business and Professions Code] so long as such advertising does not promote the excessive or unnecessary use of such services.

Clearly, the Board's policy decision that it is misleading to consumers if a podiatrist's advertisement includes a specialty certification unless that specialty certification was issued by a board or organization that has been approved by the Council on Podiatric Medical Education implements, interprets, or makes specific the law enforced or administered by the Board, namely, Business and Professions Code section 651 and title 16, CCR, section 1399.688.[18]

OAL, therefore, concludes that the Board's policy decision is a "regulation" and is subject to the requirements of the APA.

III. DOES THE CHALLENGED POLICY DECISION FOUND TO BE A "REGULATION" FALL WITHIN ANY RECOGNIZED EXEMPTION FROM APA REQUIREMENTS?

Generally, all "regulations" issued by state agencies are required to be adopted pursuant to the APA, unless expressly exempted by statute.[19] In *United Systems of Arkansas v. Stamison* (1998),[20] the California Court of Appeal rejected an argument by the Director of the Department of General Services that language in the Public Contract Code had the effect of exempting rules governing bid protests from the APA.

According to the *Stamison* Court:

> "*When the Legislature has intended to exempt regulations from the APA, it has done so by clear, unequivocal language.* (See, e.g., Gov. Code, section 16487 ['The State Controller may establish procedures for the purpose of carrying out the purposes set forth in Section 16485. These procedures are exempt from the Administrative Procedure Act.']; Gov. Code, section 18211 ['Regulations adopted by the State Personnel Board are exempt from the Administrative Procedure Act']; Labor Code, section 1185 [orders of Industrial Welfare Commission 'expressly exempted' from the APA].) [Emphasis added.]"[21]

Express statutory APA exemptions may be divided into two categories: special and general.[22] *Special* express statutory exemptions typically: (1) apply only to a portion of one agency's "regulations" and (2) are found in that agency's enabling act. *General* express statutory exemptions typically: (1) apply across the board to all state agencies and (2) are found in the APA. An example of an express *special* exemption is Penal Code section 5058, subdivision (d)(1), which exempts pilot programs of the Department of Corrections under specified conditions. An example of an express *general* exemption is Government Code section 11342, subdivision (g), part of which exempts "internal management" regulations of all state agencies from the APA.

A. DOES THE CHALLENGED POLICY DECISION FALL WITHIN ANY *SPECIAL* OR *GENERAL* EXPRESS APA EXEMPTION?

In this determination proceeding, the Board does not contend that any special or general statutory exemption applies. Our independent research having also disclosed no special or general statutory exemption, we conclude that none applies.

CONCLUSION

For the reasons set forth above, OAL concludes that at the time the request for determination was filed with OAL, the Board's policy decision that it is misleading to consumers if a podiatrist's advertisement includes a specialty certification unless that specialty certification was issued by a board or organization that has been approved by the Council on Podiatric Medical Education was a "regulation" that was issued in violation of the APA and, therefore, was without legal effect.

DATE: March 30, 1999

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ENDNOTES

1. The request for determination was filed on October 8, 1996, by James J Milam, Attorney At Law, 1211 K Street, P.O. Box 1116, Modesto, CA 95353, (209) 529-5186. The agency response was filed by Robert A. Miller, Legal Counsel for the Board of Podiatric Medicine, 1420 Howe Avenue, Suite 8, Sacramento, CA 95825-3229, (916) 263-2647.

   On November 6, 1998, OAL published a summary of this request for determination in the California Regulatory Notice Register ("CRNR") 98, No.45-Z, p. 2235, along with a notice inviting public comment. No comments were received.

   This determination was filed with the Secretary of State on the date listed on the first page of this determination. This determination may be cited as "**1999 OAL Determination No. 10.**"

2. Statutes 1998, chapter 736, (S.B. 1981), section 2.

3. Title 1, California Code of Regulations ("CCR") (formerly known as the "California Administrative Code"), subsection 121(a), provides:

   > "'*Determination*' means a finding by OAL as to whether a state agency rule is a 'regulation,' as defined in Government Code section 11342(g), which is ***invalid and unenforceable*** unless
   >
   > (1) it has been adopted as a regulation and filed with the Secretary of State pursuant to the APA, *or*,
   >
   > (2) it has been exempted by statute from the requirements of the APA." [Emphasis added.]

   See Grier v. Kizer (1990) 219 Cal.App.3d 422, 268 Cal.Rptr. 244, review denied (finding that Department of Health Services' audit method was *invalid and unenforceable* because it was an underground regulation which should be adopted pursuant to the APA); and *Planned Parenthood Affiliates of California v. Swoap* (1985) 173 Cal.App.3d 1187, 1195, n. 11, 219 Cal.Rptr. 664, 673, n. 11 (citing Gov. Code sec. 11347.5 [now 11340.5] in support of finding that uncodified agency rule which constituted a "regulation" under Gov. Code sec. 11342, subd. (b) [now subd. (g)] yet had not been adopted pursuant to the APA, was *"invalid"*). We note that a 1996 California Supreme Court case stated that it "disapproved" of *Grier* in part. *Tidewater Marine Western, Inc. v. Bradshaw* (1996) 14 Cal.4th 557, 577, 59 Cal.Rptr.2d 186, 198. *Grier*, however, is still authoritative, except as specified by the *Tidewater* court. *Tidewater* itself, in discussing which agency rules are subject to the APA, referred to "the two-part test of the Office of Administrative Law," citing *Union of American Physicians & Dentists v. Kizer* (1990) 223 Cal.App.3d 490, 497, 272 Cal.Rptr. 886, a case which quotes the test from *Grier v. Kizer.*

4. According to Government Code section 11370:

> "*Chapter 3.5* (commencing with Section 11340), *Chapter 4* (commencing with Section 11370), *Chapter 4.5* (commencing with Section 11400, and ***Chapter 5*** (commencing with Section 11500) *constitute*, and may be cited as, *the Administrative Procedure Act*. [Emphasis added.]"

OAL refers to the portion of the APA which concerns rulemaking by state agencies: Chapter 3.5 of Part 1 ("Administrative Regulations and Rulemaking") of Division 3 of Title 2 of the Government Code, sections 11340 through 11359.

5. Business and Professions Code section 651 (Statutes of 1998, chapter 736, section 2 (S.B. 1981)), subdivision (h), provides in part:

> "(h) Advertising by any person so licensed [under division 2, titled "Healing Arts," commencing with section 500 of the Business and Professions Code) may include the following:
>
> . . . .
>
> (5)(C) A doctor of podiatric medicine licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California may include a statement that he or she is certified or eligible or qualified for certification by a private or public board or parent association, including, but not limited to, a multidisciplinary board or association, if that board or association meets one of the following requirements: (I) is approved by the Council on Podiatric Medical Education, (ii) is a board or association with equivalent requirements approved by the California Board of Podiatric Medicine, or (iii) is a board or association with the Council on Podiatric Medical Education approved postgraduate training programs that provide training in podiatric medicine and podiatric surgery. A doctor of podiatric medicine licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California who is certified by an organization other than a board or association referred to in clause (I), (ii), or (iii) shall not use the term "board certified" in reference to that certification. . . ."

6. Effective January 1, 1999, Business and Professions Code section 651 also permits a podiatrist to advertise a specialty certification if the specialty certification is issued by a board or association that has met equivalent requirements necessary to be approved by CPME and has been approved by the California Board of Podiatric Medicine, or is a board or association with the Council on Podiatric Medical Education approved postgraduate training programs that provide training in podiatric medicine and podiatric surgery.

7. Title 1, CCR, sections 122, 123, 124, 125, and 126.

8. Government Code section 11342, subdivision (a).

9. See *Winzler & Kelly v. Department of Industrial Relations* (1981) 121 Cal.App.3d 120, 126-128, 175 Cal.Rptr. 744, 746-747 (Unless "expressly" or "specifically" exempted, all state agencies not in legislative or judicial branch must comply with rulemaking part of the APA when engaged in quasi-legislative activities); *Poschman v. Dumke* (1973) 31 Cal.App.3d 932, 942, 107 Cal.Rptr. 596, 603.

10. (1990) 219 Cal.App.3d 422, 440, 268 Cal.Rptr. 244, 251. OAL notes that a 1996 California Supreme Court case stated that it "disapproved" of *Grier* in part. *Tidewater Marine Western, Inc. v. Bradshaw* (1996) 14 Cal.4th 557, 577. *Grier*, however, is still good law, except as specified by the *Tidewater* court. Courts may cite cases which have been disapproved on other grounds. For instance, in *Doe v. Wilson* (1997) 57 Cal.App.4th 296, 67 Cal.Rptr. 187, 197, the California Court of Appeal, First District, Division 5 cited *Poschman v. Dumke* (1973) 31 Cal.App.3d 932, 107 Cal.Rptr. 596, on one point, even though *Poschman* had been expressly disapproved on another point nineteen years earlier by the California Supreme Court in *Armistead v. State Personnel Board* (1978) 22 Cal.3d 198, 204 n. 3, 149 Cal.Rptr. 1, 3 n.3. Similarly, in *Economic Empowerment Foundation v. Quackenbush* (1997) 57 Cal.App.4th 677, 67 Cal.Rptr.2d 323, 332, the California Court of Appeal, First District, Division 4, nine months after *Tidewater*, cited *Grier v. Kizer* as a distinguishable case on the issue of the futility exception to the exhaustion of administrative remedies requirement.

Tidewater itself, in discussing which agency rules are subject to the APA, referred to "the two-part test of the Office of Administrative Law," citing *Union of American Physicians & Dentists v. Kizer* (1990) 223 Cal.App.3d 490, 497, 272 Cal.Rptr. 886, a case which quotes the test from *Grier v. Kizer*.

11. The *Grier* Court stated:

> "The OAL's analysis set forth a two-part test: 'First, is the informal rule either a rule or standard of general application or a modification or supplement to such a rule? [Para.] Second, does the informal rule either implement, interpret, or make specific the law enforced by the agency or govern the agency's procedure?' **(1987 OAL Determination No. 10**, . . ., slip op'n., at p. 8.)"

OAL's wording of the two-part test, drawn from Government Code section 11342, has been modified slightly over the years. The cited OAL opinion--**1987 OAL Determination No. 10**--was published in California Regulatory Notice Register 96, No. 8-Z, February 23, 1996, p. 292.

12. (1990) 219 Cal.App.3d 422, 438, 268 Cal.Rptr. 244, 253.

13. *Winzler & Kelly v. Department of Industrial Relations* (1981) 121 Cal.App.3d 120, 128, 174 Cal.Rptr. 744, 747.

14. (1993) 12 Cal.App.4th 697, 702, 16 Cal.Rptr.2d 25, 28.

15. Board's response, page 2.

16. *Roth v. Department of Veteran Affairs* (1980) 110 Cal.App.3d 622, 167 Cal.Rptr. 552. See also, *Faulkner v. California Toll Bridge Authority* (1953) 40 Cal.2d 317, 323-324 (standard of general application applies to all members of any open class).

17. Effective January 1, 1999, Business and Professions Code section 651, subdivision (h)(5)(C), states:

> "(h) Advertising by any person so licensed may include the following:
>
> "(5) . . . .
>
> "(C) A doctor of podiatric medicine licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California may include a statement that he or she is certified or eligible or qualified for certification by a private or public board or parent association, including, but not limited to, a multidisciplinary board or association, *if that board or association meets one of the following requirements: (I) is approved by the Council on Podiatric Medical Education*, (ii) is a board or association with equivalent requirements approved by the California Board of Podiatric Medicine, or (iii) is a board or association with the Council on Podiatric Medical Education approved postgraduate training programs that provide training in podiatric medicine and podiatric surgery. A doctor of podiatric medicine licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California who is certified by an organization other than a board or association referred to in clause (I), (ii), or (iii), shall not use the term 'board certified' in reference to that certification.
>
> "For purposes of this subparagraph, a 'multidisciplinary board or association' means an educational certifying body that has a psychometrically valid testing process, as determined by the California Board of Podiatric Medicine, for certifying doctors of podiatric medicine that is based on the applicant's education, training, and experience. For purposes of the term 'board certified,' as used in this subparagraph, the terms 'board' and 'association' mean an organization that is a Council on Podiatric Medical Education approved board, an organization with equivalent requirements approved by the California Board of Podiatric Medicine, or an organization with a Council on Podiatric Medical Education approved postgraduate training program that provides training in podiatric medicine and podiatric surgery. . . ."

18. One might argue that the Board's policy decision was merely a restatement of existing law. For example, Title 16, CCR, Section 1399.662 provides:

> "(a) *Colleges of podiatric medicine* accredited by the *Council on Podiatric Medical Education* of the American Podiatric Medical Association shall be approved by the board for the giving of professional instruction in podiatric

medicine to *candidates for examination and licensure* as a doctor of podiatric medicine. [Emphasis added.]"

Title 16, CCR, Section 1399.666 states:

"Equivalent training as set forth in Section 2483 of the [Business and Professions] code [which sets forth the required instruction podiatric applicants must receive in a college or school of podiatric medicine] shall be that training obtained through those educational programs meeting the criteria and guidelines established by the *Council on Podiatric Medical Education* of the American Podiatric Medical Association and accredited by that body, provided the training meets all the requires of the code and regulations. [Emphasis added.]"

OAL would reject this argument because the sections noted above concern the CPME approval of colleges and curriculum for the initial *licensure* of a podiatrist. By contrast, the challenged policy decision concerns the advertisement of specialty training or some other professional superiority of a person who has *already* received his or her license as a podiatrist. The policy decision makes clear that the requirement of CPME approval applies not only to programs providing training to candidates for examination and licensure, but also to programs providing specialty certification training to licensed podiatrists.

19. Government Code section 11346.

20. 63 Cal.App.4th 1001, 1010, 74 Cal.Rptr.2d 407, 411-12, review denied.

21. 63 Cal.App.4th at 1010, 74 Cal.Rptr.2d at 411.

22. Cf. *Winzler & Kelly v. Department of Industrial Relations* (1981) 121 Cal.App.3d 120,126, 174 Cal.Rptr. 744, 747 (exemptions found either in prevailing wage statute or in the APA itself).